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11
12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 ROMALENE TOLENTINO and PREFERRED
MORTGAGE SERVICES, INC.,

15
16 Plaintiffs,

17 v.

18 HARTFORD LIFE AND ANNUITY
INSURANCE COMPANY, a Connecticut
19 corporation; HARTFORD FINANCIAL
SERVICES GROUP, INC., an Illinois
20 corporation; ECONOMIC CONCEPTS, INC.,
and Arizona corporation; and PAUL
21 BANNOCK, an individual,

22 Defendants.
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Case No. 2:09-CV-01327-JCM-LRL

**XXXXXXXXXX STIPULATED
PROTECTIVE ORDER REGARDING
CONFIDENTIAL INFORMATION**

1 The undersigned counsel for Plaintiffs and for Defendants hereby stipulate and agree as
2 follows:

3 1. In this action, the parties or others may be required to disclose information that the
4 conveying party considers confidential. The parties agree that good cause exists for such
5 confidential information to be protected from unnecessary disclosure. The parties agree to this
6 Stipulated Protective Order to accomplish that task.

7 2. This Stipulated Protective Order ("Order") shall govern all discovery, materials
8 and things produced and/or disclosed by parties and third parties in this proceeding, including all
9 information in or derived from writings and documents, electronically stored information,
10 deposition testimony, deposition exhibits, deposition transcripts, responses to discovery, and
11 other written, recorded or graphic materials.

12 3. "Confidential Information" as used herein refers to any information that is
13 conveyed by any party or non-party in connection with this action that a party or non-party
14 claims, in good faith, constitutes or contains financial or other business information of a
15 proprietary, confidential, or commercially sensitive nature, or information invasive of an
16 individual's legitimate privacy interests. Confidential Information includes:

17 a. Information set forth in response to discovery requests, provided that prior
18 to disclosure to the receiving party through its counsel, the conveying party marks the responses
19 with one of the following legends:

20 **CONFIDENTIAL**

21 **or**

22 **CONFIDENTIAL — FOR ATTORNEYS' EYES ONLY**

23 or similar legend agreed upon by the parties clearly indicating whether the conveying party
24 intends that the material is to be viewed only by attorneys and experts for the receiving party or
25 by other designated individuals as provided herein;

26 b. Information set forth in documents produced in response to a request for
27 production, provided that prior to or at the time of production to the receiving party through its
28

1 counsel, the conveying party designates such documents as Confidential Information or marks
2 copies of such documents with a legend as set forth in subparagraph (a) above.

3 A conveying party who produces documents from its files for inspection and selection for
4 copying by a receiving party through its counsel may require that, during the course of
5 production, such documents only be reviewed by persons authorized to receive Confidential
6 Information pursuant to Paragraphs 5 or 6 of this Order, and any copies, reproductions,
7 summaries, excerpts, compilations, notes, or information obtained or generated by such reviewers
8 during the course of production shall be treated as Confidential Information designated for access
9 only as contemplated by Paragraphs 5 or 6;

10 c. Information disclosed during depositions, provided that counsel, the
11 witness, or the party whose Confidential Information is to be or was disclosed, states on the
12 record at the deposition what is to be treated as Confidential Information. Arrangements shall be
13 made with the court reporter taking and transcribing such proceedings to separately bind such
14 portions of the transcript containing information designated as Confidential, and to label such
15 portions appropriately. Additionally, a party or non-party may designate such Confidential
16 Information in writing within fifteen (15) days of the completion of the transcript of such
17 deposition (as certified by the court reporter). After any such written designation, counsel for all
18 the parties shall be responsible for marking the designated material in all previously unmarked
19 copies of transcripts with a legend as set forth in subparagraph (a) above. Prior to the expiration
20 of such fifteen (15) day period, all information disclosed during a deposition shall constitute
21 Confidential Information, unless otherwise agreed by the parties and the witness, or ordered by
22 the Court;

23 d. Any other information conveyed by the conveying party to the receiving
24 party directly or through its counsel that the conveying party claims in good faith to be its
25 financial or other business information of a proprietary, confidential, or commercially sensitive
26 nature, or information invasive of an individual's legitimate privacy interests, provided that, prior
27 to disclosure to the receiving party through its counsel, the information, if in written or other
28 tangible form, is marked by the conveying party with one of the legends set forth in

1 subparagraph (a) above, and, if in oral or other intangible form, is identified as Confidential
2 Information and, if practical, within fifteen (15) days after disclosure is reduced to written form
3 which bears one of the notices set forth above;

4 e. In addition, a party other than the conveying party may designate as
5 Confidential Information any information that a party claims, in good faith, to be its financial or
6 other business information of a proprietary, confidential, or commercially sensitive nature, or
7 information invasive of an individual's legitimate privacy interests. Such designation shall be
8 made at any time by giving written notice to all parties to this action. All parties shall then mark
9 the designated documents with a legend as set forth in subparagraph (a) above;

10 f. Copies, reproductions, notes, summaries, excerpts, and compilations of or
11 references to any information set forth in subsections (a) through (e), inclusive, above.

12 4. If any information that a conveying party claims in good faith is Confidential
13 Information is inadvertently disclosed to a receiving party without being properly designated as
14 Confidential Information, the conveying party may notify each receiving party that such
15 Confidential Information inadvertently was not so designated. Such written notice shall identify
16 with specificity the information or documents the conveying party is then designating to be
17 Confidential Information. If the conveying party gives such written notice as provided above, its
18 claims of confidentiality shall not be deemed to have been waived by its failure to designate
19 properly the information as Confidential Information prior to disclosure. Upon receipt of written
20 notice as provided for herein, the receiving party shall mark the original and all known copies of
21 the documents with the proper designation. In addition, the receiving party shall use its best
22 efforts to ensure that the information that was inadvertently not designated is thereafter restricted
23 to only those persons entitled to receive Confidential Information under the terms set forth herein.

24 5. Confidential Information may be designated "CONFIDENTIAL —
25 FOR ATTORNEYS' EYES ONLY" where the conveying party reasonably and in good faith
26 believes that such Confidential Information is highly sensitive and that its disclosure other than as
27 provided for in this Paragraph could result in the substantial invasion of the conveying party's
28 legitimate interest in maintaining as confidential proprietary or commercially sensitive

1 information, or a substantial invasion of the conveying party's legitimate privacy interests.
2 Confidential Information designated "CONFIDENTIAL — FOR ATTORNEYS' EYES ONLY"
3 shall be deemed to require the highest degree of confidentiality and may be disclosed only to
4 (i) in-house and outside attorneys and their respective employees for the parties; (ii) copy services
5 retained by counsel for the parties for the preparation of this action; (iii) outside experts or
6 consultants retained for the purposes of this litigation provided that review of such Confidential
7 Information designated "CONFIDENTIAL — FOR ATTORNEYS' EYES ONLY" is necessary
8 for such expert or consultant to render his or her opinion; and (iv) Plaintiff(s), provided the
9 information designated "CONFIDENTIAL -- FOT ATTORNEYS' EYES ONLY" disclosed to
10 Plaintiff(s) refers solely to Plaintiff(s) or to the person or entity to whom it relates has consented
11 to its disclosure.

12 6. Confidential Information designated "CONFIDENTIAL" may be disclosed subject
13 to all the provisions and restrictions employed with respect to materials and information
14 designated "CONFIDENTIAL — FOR ATTORNEYS' EYES ONLY," except that the
15 Confidential Information designated "CONFIDENTIAL" may also be disclosed to parties and
16 their employees, non-party witnesses, and experts or consultants of a party, to the extent deemed
17 necessary by counsel for the prosecution or defense of this litigation. For purposes of this Order,
18 "party" with respect to the plaintiff(s) herein shall mean only those individuals that are named
19 plaintiffs in this action.

20 7. Before a receiving party discloses a conveying party's Confidential Information to
21 any expert or consultant or non-party witness, the expert or consultant or non-party witness must
22 certify that he or she has read this Order and manifest his or her assent to be bound thereby by
23 signing a copy of the "Certification," the form of which is attached hereto as Exhibit A. Once a
24 person has executed such a "Certification," it shall not be necessary for that person to sign a
25 separate "Certification" each time that person is subsequently given access to Confidential
26 Information. Each "Certification" executed by an expert or consultant or non-party witness shall
27 be retained by counsel for the receiving party, and need not be produced to the conveying party
28 except as necessary in the case of a dispute concerning a violation of this Order. Non-party

1 witnesses who are shown Confidential Information shall not be allowed to retain copies of the
2 Confidential Information.

3 8. Nothing herein shall prohibit a party, or its counsel, from disclosing a document
4 designated "CONFIDENTIAL" or "CONFIDENTIAL — FOR ATTORNEYS' EYES ONLY" to
5 the author or recipient of such document, or to a person who is a current executive officer or
6 director of the same company as the author or recipient, or who served as an executive officer or
7 director of that company at the time the document was authored.

8 9. Except as otherwise agreed upon by the parties in writing, all Confidential
9 Information produced in this litigation shall be used only by persons permitted access to it
10 pursuant to Paragraphs 5, 6, and 8, shall be used only for the purpose of this action, *Tolentino, et*
11 *al. v. Hartford Life and Annuity Insurance Company, et al.*, Case No. 2:09-CV-01327-JCM-LRL,
12 and may not be used for any other purpose, including any other administrative or judicial
13 proceedings or actions; and shall not be disclosed to persons other than those permitted access
14 pursuant to Paragraphs 5, 6, and 8.

15 10. The recipient of any Confidential Information that is provided under this Order
16 shall maintain such information in a secure and safe area and shall use best efforts to maintain the
17 confidentiality of such information and ensure that access to Confidential Information is strictly
18 limited to persons entitled to receive Confidential Information in accordance with the provisions
19 of this Order.

20 11. No person shall attend portions of depositions during which Confidential
21 Information is disclosed unless such person is an authorized recipient of Confidential Information
22 under the terms of this Order. If, during the course of a deposition, the response to a question
23 would require the disclosure of Confidential Information, the witness may refuse to answer or the
24 party whose Confidential Information would be disclosed may instruct the witness not to answer
25 or not to complete his answer, as the case may be, until any persons not authorized to receive
26 Confidential Information have left the room.

27 12. Any court reporter or videographer who transcribes or videotapes testimony in this
28 action at a deposition shall be required to agree, before transcribing or videotaping any such

1 testimony, that all information designated Confidential Information shall not be disclosed except
2 as provided in this Order, and that copies of any transcript, reporter's notes, videotapes, or any
3 other transcription records of any such testimony will be retained in absolute confidence and
4 safekeeping by such reporter or videographer or shall be delivered to an attorney of record or
5 filed under seal with the Court.

6 13. Stamping a Confidential Information legend (as detailed in Paragraph 3,
7 subparagraph (a)) on the cover of any multi-page document shall designate all pages of the
8 document as Confidential Information unless otherwise indicated by the conveying party.

9 14. Any party filing with the Court any pleading, memorandum of points and
10 authorities, motion, brief, affidavit, declaration or other paper containing, appending,
11 summarizing, excerpting or otherwise embodying Confidential Information must comply with
12 applicable law with respect to filing documents under seal in this Court.

13 15. Should need arise during any hearing before the Court for any party to disclose
14 Confidential Information, it may do so only after appropriate safeguards are provided by the
15 Court.

16 16. Notwithstanding any other provision of this Order to the contrary, the
17 confidentiality obligations of this Order shall not apply, or shall cease to apply, to any
18 information that:

19 a. At the time of disclosure hereunder, was already lawfully in the possession
20 of the receiving party and was not acquired through discovery or under any obligation of
21 confidentiality; or

22 b. At the time of disclosure hereunder was, or subsequently becomes, through
23 no fault of the receiving party, a public document or publicly available.

24 17. Nothing in the provisions of this Order shall prevent a conveying party from using
25 its own Confidential Information in any manner such conveying party desires.

26 18. Nothing in the provisions of this Order shall be deemed to preclude any party from
27 seeking and obtaining, on an appropriate showing, such additional protection with respect to
28 Confidential Information as that party may consider appropriate. If a receiving party disputes the

1 designation of a document as “Confidential” or “Confidential – For Attorneys’ Eyes Only,” the
2 receiving party’s counsel shall inform counsel for the producing party in writing of the objection.
3 Counsel for the producing party shall, within ten (10) business days after receipt of the objection,
4 set forth in writing the basis for the designation. After the parties have conferred, if the dispute
5 cannot be resolved, the producing party shall apply to the court for a Protective Order. If the
6 producing party does not re-designate the document: (i) after the parties confer or (ii) if the
7 receiving party does not withdraw its objection, then the document will lose its confidential
8 designation unless the producing party files for a Protective Order within twenty (20) days. In
9 the event an application for Protective Order is filed pursuant to this paragraph, the Confidential
10 Information in question shall remain subject to this Order until the Court rules on the application.

11 19. All provisions of this Order restricting the communication or use of Confidential
12 Information shall continue to be binding after the conclusion of this action, including all appeals,
13 unless otherwise agreed or ordered. At the conclusion of the litigation, including all appeals, any
14 document or thing (other than attorney work product, court filings, or e-mail or correspondence
15 maintained for archival or record-keeping purposes) which contains Confidential Information of a
16 party and all copies made thereof, including any copies provided to any other persons, shall
17 within 30 days be returned to the conveying party from whom it was obtained or destroyed. If a
18 party destroys, rather than returns, Confidential Information, that party shall certify in writing that
19 such documents have been destroyed, and serve such certification on all parties within 30 days of
20 the termination of this litigation. At the conclusion of this litigation, including all appeals,
21 counsel for the parties shall maintain the confidentiality as specified in this Order of all work
22 product materials containing Confidential Information, and shall not use Confidential Information
23 for any other purpose.

24 20. In the event any person or party having possession, custody or control of any
25 Confidential Information receives a subpoena, discovery request, or other process or order to
26 produce such information, such person or party shall promptly notify the attorneys of record of
27 the party or nonparty claiming such confidential treatment of the information sought, shall furnish
28 those attorneys of record with a copy of said subpoena, request, or other process or order, and

1 shall not interfere with respect to any procedure sought to be pursued by the party or nonparty
2 whose interests may be affected. The party or nonparty asserting the confidential treatment shall
3 have the burden of defending against such subpoena, process or order. The person or party
4 receiving the subpoena, request, or other process or order shall, once sufficient notice to all
5 interested parties and a reasonable opportunity (but in no case less than 5 days after notice) to
6 object has been given, be entitled to comply with it except to the extent the party or nonparty
7 asserting the confidential treatment has filed for or succeeded in obtaining an order modifying or
8 quashing the subpoena, request, or order.

9 21. This Order shall be without prejudice to the right of any party to oppose
10 production of any information on any ground allowed under applicable law.

11 22. Any party may apply to the Court for an order modifying this Order, and nothing
12 in this Order shall be deemed to prevent such application. This Order may also be modified with
13 the consent of all parties, subject to Court approval, or by the Court on its own motion, and
14 nothing in this Order shall be deemed to prevent such modification.

15 23. Nothing herein shall be deemed to waive any applicable privilege or work product
16 protection, or to affect the ability of a party to seek relief for inadvertent disclosure of material
17 protected by privilege or work product protection.

18 24. Nothing contained in this Order, nor any action taken in compliance with it, shall:

19 a. Operate as an admission by any party that any particular document or
20 information is, or is not, confidential;

21 b. Operate as an admission by any party that any particular document or
22 information is, or is not, subject to discovery or admissible in evidence at the trial of this action.

23 25. The parties, including all persons subject to discovery in these proceedings or who
24 receive a copy of this Order, hereby consent to the jurisdiction of this Court for the purpose of
25 enforcement of the provisions of this Order. The Court hereby retains jurisdiction to interpret and
26 enforce this Order during the pendency of this action and following dismissal, if any, and further
27 retains jurisdiction to modify, amend or make additions to this Order as it may from time to time
28

1 deem appropriate. Any violation of the terms of this Order may result in the imposition of such
2 relief as the Court deems appropriate.

3 26. This Order may be executed in counterparts.

4 27. The Court may modify this Order in the interests of justice or for public policy
5 reasons.

6
7 IT IS HEREBY STIPULATED.

8 Dated: September 24, 2010

GREGORY R. MILLER
DAVID L. MCGEE
BEGGS & LANE, RLLP

11 By: /s/ Gregory R. Miller
Gregory R. Miller

12 Attorneys for Plaintiffs Romalene
13 Tolentino and Preferred Mortgage
Services, Inc.

14 Dated: September 24, 2010

DAVID F. MCDOWELL
REBEKAH KAUFMAN
MORRISON & FOERSTER LLP

16 NICHOLAS J. SANTORO
17 JASON D. SMITH
18 SANTORO, DRIGGS, WALCH, KEARNEY,
HOLLEY & THOMPSON

19
20 By: /s/ Jason D. Smith
Jason D. Smith

21 Attorneys for Defendants Hartford Life
22 and Annuity Insurance Company and
23 Paul Bannock

XXXXXXXXX ORDER

Pursuant to the parties' Stipulation, and good cause appearing therefore, it is hereby ordered that the stipulation of the parties regarding confidential information is confirmed in all of its particulars.

IT IS SO ORDERED.

Dated: October 7, 2010



LAWRENCE R. LEAVITT
U.S. MAGISTRATE JUDGE

EXHIBIT A
CERTIFICATION

I, _____ (print or type name), hereby certify that I have read the [Proposed] Stipulated Protective Order Regarding Confidential Information in the action entitled *Tolentino, et al. v. Hartford Life and Annuity Insurance Company, et al.*, Case No. 2:09-CV-01327-JCM-LRL, prior to receiving any Confidential Information as defined therein, that I understand the terms and effect of that Order, and that I agree to be bound thereby. I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada in connection with that Order.

I understand that all Confidential Information, as defined in the Order, including, but not limited to any copies thereof or notes or other transcriptions made therefrom, shall be maintained in a secure manner and shall be returned no later than 30 days after the termination of this action to the counsel for the party or other person who provided such Confidential Information.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this _____ day of _____, 20____, at _____.
